



County of Yolo

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May 30, 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

Ms. Delores Brown, Chief
Office of Environmental Compliance
Department of Water Resources
P.O. Box 942836
Sacramento, CA 94236

Re: Comments on the EIR/EIS for the Bay Delta Conservation Plan
Response to March 17, 2008 Notice of Preparation

Dear Ms. Brown:

The County of Yolo ("County") submits the following initial comments in response to the Notice of Preparation ("NOP") of the EIR/EIS for the Bay Delta Conservation Plan ("BDCP").

INTRODUCTION

Under the California Environmental Quality Act ("CEQA"), the County is a "responsible agency" with regard to the BDCP, as it may have permitting authority or approval power over aspects of the project. The County has a number of serious concerns about the potential components of the BDCP and the environmental review process. The County recognizes, however, that the BDCP is an effort to address the many complex environmental and water conveyance problems associated with the Delta. The need to address these problems is clear. The County also recognizes that the responsibility for doing so rests not only with the Department of Water Resources or other State agencies, but with the County and all other affected local jurisdictions as well.

At a minimum, the County thus intends to actively monitor the progress of the BDCP and, whenever possible, to provide thorough input regarding the content of the BDCP and related environmental review processes. The County will also participate actively in the BDCP process to ensure that the interests of its residents, businesses, and other constituents are respected. As made clear during an April 30, 2008 scoping meeting in Clarksburg, the process to date has confused and alienated many County residents. The reasons for this—including uncertainties about the components, geographic scope, and environmental and economic effects of the BDCP—are the subject of a significant portion of this letter. These uncertainties can and should be addressed in the near future, before the BDCP planning or environmental review process has

crystallized and local jurisdictions and their constituents are left without a meaningful say in matters that could forever change the Delta.

There are many reasons for taking such action in a timely manner. Of course, the legal adequacy of the BDCP and the EIR/EIS depends on whether the public review and comment process satisfies all legal requirements. The County believes that the NOP does not meet these requirements. Further scoping—following the issuance of a legally adequate NOP—is therefore both necessary and appropriate.

There is also another good reason why the Department should act quickly to clarify what the BDCP is and is not, and retrace its initial steps in the environmental review process. As with past efforts to build a “peripheral canal,” the Department undoubtedly recognizes that the BDCP and related projects cannot move forward without broad public support. The recent meeting in Clarksburg demonstrated that, without clear information about the BDCP, citizens may simply oppose it on any number of grounds. Significant concern already exists among Clarksburg area residents that the BDCP will convert their farms to habitat, send their irrigation water to southern parts of the State, and potentially expose their property to increased flood hazard. These are just a few of the many substantial concerns that must be addressed as the BDCP moves ahead.

Accordingly, the County respectfully requests that the Department advise the public that it will issue a new, revised NOP and conduct additional scoping meetings during the second half of 2008 or as soon thereafter as possible. The County’s specific concerns about the NOP and related environmental issues are as follows.

I. THE LEGAL ADEQUACY OF THE NOP.

A. The NOP is Premature, and it Lacks an Adequate Project Description.

The County’s principal concern with the NOP is that it lacks an adequate project description. This is because the NOP is premature—preceding even the development of the draft BDCP that the resulting EIR/EIS will study—and the specific details necessary to furnish an adequate project description apparently remain to be developed. This shortcoming undermines the environmental review process at the starting gate.

As explained in CEQA Guidelines § 15083(b), “[s]coping has been found to be an effective way to bring together and resolve the concerns of affected federal, state, and local agencies, the proponent of the action, and other interested persons including those who might not be in accord with the action on environmental grounds.” Similarly, the Guidelines further direct that “EIRs and negative declarations should be prepared as early as feasible in the planning process to enable environmental considerations to influence project program and design *and yet late enough to provide meaningful information for environmental assessment.*” CEQA Guidelines § 15004(b) (emphasis added); see also Guidelines § 15004(a) and (c); Pub. Resources Code § 21061.

To help achieve these aims, the CEQA Guidelines set forth certain legal requirements that apply to NOPs. Section 15082(a)(1) of the CEQA Guidelines states that an NOP must “provide the responsible and trustee agencies . . . with sufficient information describing the project and the potential environmental effects to enable the responsible agencies to make a *meaningful response.*” To this end, a legally adequate NOP must include: a description of the project; its location, either by street address or on a map; and a statement of the project’s probable environmental effects. CEQA Guidelines § 15082(a)(1).

In turn, responsible agencies (like the County) must respond “with specific detail about the scope and content of the environmental information related to the responsible or trustee agency’s area of statutory responsibility that must be included in the draft EIR.” CEQA Guidelines § 15082(b). And just as an overly broad project description in an NOP is legally inadequate, so too is a response that is merely a “generalized list of concerns not related to the specific project” described in the NOP.

But under the circumstances present here, it is difficult for the County to respond with more than a “generalized list of concerns” when the NOP itself contains, at best, only a generalized description of the contemplated project. The NOP begins by stating that the EIR/EIS for the BDCP “will include analysis of improved water conveyance infrastructure and other habitat conservation measures that will be developed to advance the goals of the BDCP.” (NOP at p. 2.) And those goals, the NOP advises, are to “secure authorizations that would allow the conservation of covered species, the restoration and protection of water supply reliability, protection of certain drinking water quality parameters, and the restoration of ecosystem health to proceed within a stable regulatory framework.” (NOP at p. 2.)

This could mean virtually anything at all. But more detail simply does not appear in the NOP.

Instead, the NOP says that “[t]he planning effort for the BDCP is in the preliminary stages of development, and further information . . . may be provided to the public in subsequent public notices or in scoping meetings.” (NOP at p. 1.) The County and other interested parties are told only that “[t]he EIR/EIS will analyze the impacts of alternative conservation actions including improved water conveyance infrastructure in the Delta (e.g., dual or isolated conveyance systems) . . . [which] would require a canal from the Sacramento River to the SWP Harvey O. Banks and the CVP C.W. Jones pumping plants near Tracy.” (NOP at p. 2.) Through these and other “conservation actions”—apparently, a euphemism for the construction of billions of dollars of new water supply and delivery infrastructure—the BDCP will simultaneously restore “the Delta’s ecology and improv[e] water management.” (NOP at p. 2.)

Other potential components of the BDCP are described in similarly vague terms. For example, the NOP says that when the draft BDCP is eventually prepared and released, it may include “a number of anticipated actions” such as:

. . . habitat restoration and enhancement to increase the quality and quantity of habitat in the Delta; other conservation actions to help address a number of stressors on covered species; conveyance facilities to enhance operational flexibility and water supply reliability while providing greater opportunities for habitat improvements and fishery conservation; water operations and management actions to achieve conservation and water supply goals; and a comprehensive monitoring, assessment and adaptive management program guided by independent scientific input. (NOP at pp. 4-5.)

Once again, this could mean anything at all. And while the rest of the NOP lists various potential “covered activities,” planning goals, and similar matters, the level of detail is too vague to be of any real value to the County or other interested parties in responding to the NOP.

Altogether, these deficiencies make it impossible for the County to discharge its legal obligation to express more than simply a "generalized list of concerns" about the potential environmental effects of the BDCP. And while the NOP advises that additional information may be available on the internet, in scoping meetings, and in future public notices, the reason that Guidelines § 15082 sets out specific content requirements for an NOP is to ensure that interested parties *do not have to* gather basic information about a project by doing their own internet research, attending numerous public meetings, or waiting for the release of more information from the lead agency. Altogether, these concerns are by themselves sufficient to require reissuance of the NOP and further scoping meetings.

B. The NOP Does Not Properly Describe the Geographic Location or Scope of the Project.

As noted above, a legally adequate NOP must include a description of the location of the project. The NOP identifies the "project area" as the "Statutory Delta," and possibly areas "outside of the Statutory Delta" such as the Suisun Marsh, Suisun Bay, and upstream areas. NOP at p. 7. This could include every watershed that contributes to the Delta (i.e., most of northern and central California). Of course, this degree of imprecision is probably necessary given the very early stage of preparation of the BDCP itself. It is a further example, however, of why the NOP is premature and legally inadequate.

Presumably, while the NOP does not say so directly, the BDCP will have very real impacts at least some of the areas described in the "Options Evaluations 9.17.2007" document posed on the website of the California Resources Agency. This includes the Clarksburg area, which is shown in that document as the potential location of extensive habitat restoration projects. As the Department is aware, this has caused significant concern among Clarksburg residents on many levels, with some drawing the conclusion that the BDCP even contemplates the relocation of local residents to make way for habitat.

Of course, this is not an acceptable outcome. It is also unacceptable that the scoping process has proceeded in such a way as to foster this belief in the first place. The public needs accurate information about the location of the BDCP and related projects—far beyond the vague details set forth in the "Options Evaluations 9.17.2007" document. Such information should not only *specifically* identify components that may be located in the Clarksburg area, but also address whether the BDCP will result in alterations to the Yolo Bypass or other local flood management and levee systems.

This basic information is necessary for the County and other interested parties to participate fully in the scoping process. Without it, the scoping process is legally flawed and will tend only to increase—rather than ameliorate—public concern about the BDCP.

C. The NOP Does Not Properly Identify the Potential Environmental Effects of the Project.

As also noted above, the NOP must include a list of the "potential environmental effects" of the Project. The included list, however, is merely a recitation of every *possible* environmental effect that could result from virtually any type of habitat restoration or water delivery infrastructure project (or combination thereof). The NOP concedes this point: "At present, sufficient information is not available to enable the Department to determine the detailed scope and significance of the effects related to the BDCP." (NOP at p. 9.)

This begs the question of how the County and other interested parties are supposed to help the Department “identify additional environmental resources to be evaluated” during the scoping process or otherwise make a meaningful, legally adequate response to the NOP. The County looks forward to identifying environmental resources to be evaluated in the EIR/EIS for the BDCP. But before it can do so, it needs more information about the BDCP so that it can accurately identify the resources that may be impacted. Indeed, the Department must itself have such information before it can responsibly proceed with the preparation of an EIR/EIS.

II. SIGNIFICANT ENVIRONMENTAL ISSUES THAT SHOULD BE EXPLORED IN THE EIR/EIS.

Although the County believes that it is premature and, for reasons stated above, impractical to provide the Department with specific advice regarding the environmental review process, the following sections attempt to provide such information based on its review of the NOP and certain other documents.

A. The Potential Impact of the BDCP on Agriculture and Delta Legacy Towns—Particularly in Clarksburg and Similar Places—Should Be Studied.

The Clarksburg area (located in the First Supervisorial District of the County) is of critical importance as the premier agricultural region within Yolo County and as the site of Clarksburg, a Delta legacy town established about 150 years ago. About 78 percent of the area is currently subject to Williamson Act contracts. And while it includes only about 9 percent of the land area within the County, crops grown in the Clarksburg area account for more than 20 percent of Yolo County’s total agricultural production value (more than \$70 million annually).

Most of this revenue (about \$53 million) arises from the sale of wine grapes and grape nursery stock. Clarksburg is a federally-designated appellation, with nearly 9,000 acres planted in wine grapes, and it is home to an active and thriving winery industry, including several increasingly renowned labels such as Bogle Vineyards, Carvalho Family Wines, Heringer Estates, and Wilson Vineyards. Several Napa Valley wineries maintain vineyards within the appellation, including Korbel Champagne, Sutter Home Winery, and Silverado Winery. Not surprisingly, Clarksburg is where 64 percent of all wine grapes are grown within Yolo County.

The County has taken steps to further enhance this productive and valuable farming region. On January 29, 2008, the Board of Supervisors adopted a resolution establishing Clarksburg as the County’s first “agricultural district.” The County’s objectives for the Clarksburg Agricultural District are to increase the amount of acres planted in wine grapes, to encourage the construction of local wine production facilities (instead of shipping much of the crop out of the County for processing), and to expand tourism to the area. In these and other ways, the County intends to strengthen the ability of local farmers to compete more effectively in the global marketplace.

Obviously, the BDCP could significantly undermine agriculture in the Clarksburg area and the County’s goals for the Agricultural District. If large tracts of existing farmland are converted to tidal inundation zones, seasonal wetlands, or other permanent non-agricultural uses, it could devastate the region’s wine

industry. The ability to attract processing facilities would decline, and without wineries and related facilities, the opportunity to expand tourism in the Clarksburg area would be dealt a severe blow. Further, as fuel prices continue to increase, the cost of shipping grapes out of the area will make local crops less competitive for use as blending juice in Lodi or Napa wines. Without these contracts, vineyards may no longer be an economically feasible crop in the Clarksburg region. Finally, the restoration of habitat in agricultural areas can also result in significant crop loss to migrating waterfowl and similar impacts.

To various extents, other agricultural areas throughout the Delta could be similarly impacted by implementation of the BDCP. The EIR/EIS should therefore study all of the following potential impacts, both with respect to the Clarksburg area and similar regions in the Delta:

- **The Direct Loss of Farmland.** How much farmland will be converted to water supply infrastructure, habitat, or other non-agricultural uses as part of the BDCP? Will mitigation—such as agricultural conservation easements in accordance with local requirements—be provided?
- **The Fallowing or Indirect Loss of Farmland.** Will implementation of the BDCP and related projects result indirectly in the conversion of additional farmland to other uses, or simply the cessation of agricultural uses? How will such indirect conversions be mitigated?
- **The Williamson Act.** How will implementation of the BDCP affect existing Williamson Act contracts, farmland security zone contracts, and similar farmland preservation tools (such as conservation easements)?
- **Additional Restrictions on Agricultural Practices.** To what extent will implementation of the BDCP result in additional restrictions on agricultural practices—including both current and reasonably foreseeable future practices? Can the impact of these restrictions be lessened or avoided through the implementation of buffers or similar measures?
- **Urban Blight and Related Effects.** To what extent could the direct and indirect loss of farmland following implementation of the BDCP cause environmental effects—such as urban blight and similar deterioration—in Clarksburg and other legacy towns in the Delta?
- **The Decline of Social Institutions.** To what extent could the direct and indirect loss of farmland and related revenues following implementation of the BDCP displace farm workers, disrupt social institutions such as schools, churches, and fire departments, and otherwise undermine the economic and cultural vitality of Clarksburg and other legacy towns in the Delta? This should include consideration of whether the charter school that recently opened in Clarksburg (following an extensive effort by local residents) would remain viable.
- **Public Exposure to Increased Flood Hazard.** To what extent will habitat restoration projects require changes to existing levee systems, potentially reducing the level of flood protection enjoyed by residents, businesses, and agricultural lands?

- **Integration with the Central Valley Flood Protection Plan.** How will the BDCP be integrated with the preparation of the Central Valley Flood Protection Plan? To what extent could it impair the timely completion of the plan or conflict with other public and private efforts to increase (or restore) the level of flood protection afforded by Delta levees?

B. All Components of the BDCP that will Alter the Delta Ecosystem Should Be Studied Intensively.

As described in the NOP and various presentation materials available on the Resources Agency website, the BDCP appears calculated to address environmental problems created in large part by existing water conveyance infrastructure—including the State Water Project (“SWP”) and Central Valley Project (“CVP”)—by building more of it. The apparent expectation is that the addition of new water conveyance infrastructure will help restore the Delta ecosystem by allowing increased salinity intrusion and the fluctuation of water flows, as a portion of Delta fresh water flows will be diverted by a “peripheral canal” or similar “around-Delta conveyance facilities” to CVP and SWP pumping plants. The implementation of intertidal marsh, floodplain, and channel habitat restoration projects throughout the Delta also appears likely to be part of the BDCP.

By design, all of these potential components of the BDCP will fundamentally alter the Delta ecosystem. The County is not aware of any scientific certainty regarding the end result. Indeed, given the complex range of influences and the limits of our present knowledge about the ecosystem, the outcome of any effort to “restore” or otherwise alter the ecosystem is uncertain. In connection with this concern, the County thus recommends that the EIS/EIR review at least the following issues:

- **Impact on Water Flows.** How will water move through (and into) the Delta following implementation of the BDCP? Will this be in compliance with all applicable laws and court orders?
- **Impacts on Wildlife, Generally.** What are the potential effects of the BDCP on existing wildlife—including but not limited to the “covered species” identified in the NOP—that are found in the Delta ecosystem, particularly those that may have adapted to the “new natural condition” resulting from the SWP, CVP, and related influences?
- **Impacts on Known Populations of Covered Species.** How could the BDCP impact known populations of the “covered species” in particular locations, whether by modifying existing habitat or otherwise? What sort of monitoring, if any, will be implemented as part of the BDCP to evaluate its effect on these populations?
- **Potential Effects on Invasive Species.** What is the potential for implementation of the BDCP to result in an influx, territorial expansion, or rise in population of undesirable or invasive species, whether due to a salinity gradient that differs from expectations or for other reasons?

- **Water Quality Impacts.** What is the potential for the diversion of freshwater flows to increase the concentration of pollutants in the Delta, including but not limited to pesticides and methylmercury? How would increased pollutant concentrations affect both the “covered species” and other species in the Delta?
- **Global Warming.** What will be the effect of global warming—and in particular, the potential for increased salinity levels in the Delta due to the rise of sea levels—on the Delta ecosystem if, among other things, freshwater flows are diverted via a peripheral canal or similar conveyance? Could a sea level rise resulting from global warming, by itself, produce the same (or similar) degree of salinity fluctuations that are anticipated as a result of the BDCP? If so, could the combined effect of *both* global warming *and* implementation of a peripheral canal (or similar) option have serious environmental consequences?
- **Loss of Habitat.** To the extent the BDCP may result, directly or indirectly, in the conversion of farmland to habitat or other uses, how will the Swainson’s hawk and other species that rely on agriculture be affected? In particular, could the BDCP cause a significant effect on the Swainson’s hawk, Giant Garter Snake, or other species that rely (to various degrees) on agriculture by modifying existing farming practices that serve to provide habitat or forage for these species?
- **Conflicts with the Local HCP/NCCP.** To what extent could the BDCP interfere with the HCP/NCCP presently under preparation by the Yolo County Habitat Joint Powers Authority? [Specific concerns relating to this HCP/NCCP are set forth separately in a letter from the Habitat JPA, and those concerns are incorporated herein by this reference.]

These are only a handful of the potentially significant environmental effects of the BDCP. All reflect a common concern—that the possible “unintended consequences” of the BDCP and any related projects be fully explored prior to any action thereon. The apparent scale of the BDCP brings with it the potential for tremendous ecological impacts that may be difficult or impossible to reverse. These possible impacts must therefore be studied and understood to the fullest feasible extent.

Finally, the County observes that Department representatives and others associated with the BDCP process have stated that environmental and water supply objectives are “co-equal” in the BDCP process. This seems implausible, both as a legal and a practical matter. Once the BDCP is adopted and all required incidental take permits are issued, the Department will have an obligation to implement the BDCP in a manner that is consistent with the permits. This may require adjustments to water deliveries that will jeopardize both the amount and reliability of fresh water exports.

In short, something will have to give if environmental problems arise. This could cause an array of significant environmental and economic impacts that do not seem to have been disclosed to date. These potential impacts should be accurately reflected in all BDCP planning documents and in future public comments.

C. The Potential Effect of the BDCP on Flood Protection Infrastructure and Related Risks to Public Health and Safety Should Be Studied.

As noted above, the EIR/EIS should review the extent to which existing levees and related infrastructure may need to be altered to accommodate habitat restoration projects and other components of the BDCP. In particular, to the extent such changes reduce the level of protection afforded to residents, businesses, and agricultural land in the Delta (or elsewhere), the EIS/EIR should document these potential impacts and thoroughly explore all feasible mitigation measures. Such measures could include ring levees around existing legacy towns, the construction of new flood protection infrastructure to supplement (or replace) any existing infrastructure that is incompatible with the BDCP, or other infrastructure improvements. The EIR/EIS should also consider potential human health effects, including but not limited to increased incidence of the West Nile Virus, which could result from the introduction of significant new wetlands habitat near Clarksburg and other urban areas.

The County also urges the Department to fully address what some may see as an apparent decision to prioritize the BDCP and related projects—particularly any new water conveyance facilities—over the improvement of existing levees in the Delta that protect large cities, small towns, and everything in between. The availability of public funds for vast new infrastructure projects is necessarily finite. To some extent, the BDCP could be seen to represent a choice between habitat restoration and water supply projects, on the one hand, and flood protection projects that are presently needed to provide a basic level of safety, on the other. The laudable goals of the BDCP could easily be overlooked if the general public comes to view the BDCP in this way.

D. The Potential Effect of the BDCP on Existing Water Rights Should Receive Close Scrutiny.

Two of the proposed BDCP options set forth in the “Options Evaluations 9.17.2007” document call for an optional “peripheral canal” or similar intake facility located across from Clarksburg. Because many of the Reclamation Districts in the Clarksburg region rely on riparian water rights, it is important to clearly evaluate and describe the potential impacts of a major upstream water export facility on the expected delivery and yield of downstream riparian rights and the continued viability of irrigated farmland that depends on those rights. Also, there needs to be assurances that all senior water rights and all rights to water within the area of origin will not be affected.

E. The Potential Effect of the BDCP on Local Government Services Should Be Carefully Examined.

If large tracts of existing farmland are purchased by the State or Federal governments and converted into permanent habitat, there will be a significant effect on the ability of local agencies to continue to deliver services to the public. For Yolo County, the resulting loss of property tax would compound existing structural inequities such as the shift in Educational Revenue Augmentation Funds. These effects would be particularly acute at a time when local government is already facing grim challenges as the economy slows, in the wake of declining real estate values and growing unemployment and social service demands. Similarly, a reduction in local property taxes as the result of state land acquisition for habitat restoration

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would adversely impact special districts such as fire protection and reclamation districts, making it increasingly difficult for them to perform critical functions.

The County raises this concern, in part, due to the longstanding failure of the California Department of Fish and Game ("CDFG") to make any payments in lieu of taxes for several years on the land it now owns in the County. The current shortfall is about \$700,000. The County has tried repeatedly to resolve this serious issue with CDFG. For this reason alone, the prospect that CDFG or other State agencies may acquire a significant amount of additional land in the County is daunting.

Altogether, these potential fiscal effects could impair the ability of the County and other local governments to provide needed services. As noted above, a declining revenue base could adversely affect schools and other institutions, reduce funding for transportation infrastructure, and otherwise have environmental effects even far away from areas directly impacted by the BDCP. The EIS/EIR should therefore review these potential impacts and consider feasible mitigation, such as an increased allocation of property tax revenues, to help ameliorate these impacts.

CONCLUSION

For the reasons set forth above, the County requests that the Department issue a legally adequate NOP and conduct additional scoping meetings. If the Department elects not to do so, then the County nonetheless asks the Department to consider the initial comments on the BDCP included in this letter. The County appreciates the opportunity to comment on the BDCP, and looks forward to being closely involved in this process as it moves forward.

Sincerely,



Duane Chamberlain
Chairman, Yolo County Board of Supervisors



Mike McGowan
Supervisor, District One

cc: Congressman Mike Thompson (w/copies to Jonathan Birdsong and Elly Fairclough)
Senator Mike Machado
Assemblywoman Lois Wolk
Assemblyman Doug La Malfa
Sacramento County
Solano County
San Joaquin County
Contra Costa County
Sharon Jensen, County Administrator
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